

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>MICHAEL L. LEWIS,</b>	:	
	:	
<b>Plaintiff</b>	:	<b>CIVIL ACTION NO. 3:18-1454</b>
	:	
<b>v.</b>	:	<b>JUDGE MANNION</b>
	:	
<b>ANDREW M. SAUL<sup>1</sup>,</b>	:	
	:	
<b>Defendant</b>	:	

**ORDER**

Pending before the court is the report of Magistrate Judge Susan E. Schwab, which recommends that the decision of the Commissioner be vacated and the instant action remanded to the Social Security Administration for further proceedings. (Doc. 20). No objections have been filed to Judge Schwab's report and recommendation.

When no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply

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<sup>1</sup>Andrew M. Saul was sworn in as Commissioner of Social Security on June 17, 2019, and is automatically substituted as the defendant in this action. See Fed.R.Civ.P. 25(d).

Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In his appeal, the plaintiff argues that the administrative law judge's ("ALJ") residual functional capacity ("RFC") finding is not supported by substantial evidence and the ALJ erred by failing to obtain any medical opinion regarding the plaintiff's impairments. The plaintiff further argues that the ALJ erred either by deeming her RFC finding a "light" RFC at all, or by failing altogether to make a finding as to whether the light occupational base had been "significantly reduced" by the plaintiff's significant standing/walking limitations.

In carefully considering the plaintiff's claims, Judge Schwab found that the ALJ did not err by failing to obtain a medical opinion regarding the plaintiff's RFC in that the ALJ had considered the entire record, including the medical evidence, the opinion evidence and the plaintiff's testimony as well

as “all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence.” Because the ALJ reviewed all of the facts of record and evidence and explained what evidence she relied upon to support her conclusion, Judge Schwab found that the ALJ did not err by failing to obtain a medical opinion regarding the plaintiff’s RFC. Judge Schwab found, however, that the ALJ’s determination that the plaintiff is capable of a limited range of light work is not supported by substantial evidence. To this extent, Judge Schwab found that the ALJ’s RFC determination relies upon limitations which contradict one another. As such, she recommends that the matter be remanded for consideration of the inherent contradiction between a finding that the plaintiff is only capable of standing or walking up to two hours and a finding that he can frequently lift or carry up to ten pounds. Neither party has objected to Judge Schwab’s recommendation.

The court has reviewed the entire report of Judge Schwab and finds no clear error of record. The court further agrees with the sound reasoning which led Judge Schwab to her recommendation. As such, the court adopts the reasoning of Judge Schwab as the opinion of the court.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1)** The report and recommendation of Judge Schwab, (**Doc. 20**), is **ADOPTED IN ITS ENTIRETY**.
- (2)** The decision of the Commissioner is **VACATED** and it is directed that the instant action be **REMANDED** to the Social Security Administration for further proceedings in accordance with the court's opinion.
- (3)** The Clerk of Court is directed to **CLOSE THIS CASE**.

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: August 30, 2019**

18-1454-01.wpd